In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-379

M. J. PIROLLI & SONS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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1. The Board found that petitioner ("the Company") violated Section 8(a)(1) and (3) of the National Labor Relations Act (Pet. 15) by coercively interrogating its employees about their union activities and threatening them with discharge if they joined Teamsters Local Union No. 379 ("the Union"), and by discharging employee Lynch and 11 others because of their union membership (A. 290-301, 311, 330-331).[1] The Board further found that

[1] "A." refers to the appendix to the briefs in the court of appeals.

the Union had valid authorization cards from a majority of the employees in an appropriate unit (A. 308), that the Company's "extensive and flagrant unfair labor practices * * * [had] rendered nugatory the processes of an NLRB-conducted election" (A. 309), and that the Company violated Section 8(a)(5) and (1) of the Act (Pet. 15) by refusing to bargain with the Union (A. 311). The Board ordered the Company to cease and desist from the unfair labor practices found, to offer employee Lynch reinstatement[2] and to make him and the 11 other employees whole for any loss of earnings they may have suffered as a result of the Company's discrimination, and to bargain with the Union upon request (A. 312-314, 331). The court of appeals enforced the Board's order (Pet. 14).

2. Petitioner does not contest the Board's findings that it violated Section 8(a)(1) and (3) of the Act, and that it refused to bargain though the Union had valid authorization cards from a majority of the employees in an appropriate unit. Petitioner's sole contention is that the Board improperly issued a bargaining order, since it failed "to consider or analyze the cleansing effect of a valid reinstatement offer to petitioner on the election atmosphere" (Pet. 2). This issue does not warrant review by this Court. Although the Trial Examiner, whose findings the Board

[2] The Board found that, on November 25, 1970, the Company had made a valid offer of reinstatement to the 11 other employees, and hence did not require a new offer of reinstatement to them (A. 302-303).

adopted, did not specifically allude to the offer of reinstatement in concluding that a bargaining order was appropriate (A. 309), he fully discussed the offer earlier in his decision, finding that the Company President had made remarks on the picket line that detracted from the effectiveness of the offer and that only three employees accepted it (A. 302). In these circumstances, and in view of the flagrant nature of the Company's earlier unfair labor practices, the Examiner and the Board were reasonable in concluding that it was not possible "to resolve the representation question through the process of an NLRB-conducted election" (A. 309), and that therefore a bargaining order was warranted. *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 613-614.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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PETER G. NASH,
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SEPTEMBER 1972.

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